

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

9 Deborah Bormann, a single woman, ) No. CV 09-264-TUC-FRZ  
10 Plaintiff, ) **ORDER**  
11 vs. )  
12 Waxie Enterprises, Inc., dba Waxie )  
13 Sanitary Supply, )  
14 Defendant. )

15 Plaintiff Deborah Bormann filed her original Complaint for wrongful termination  
16 based on age discrimination in violation of A.R.S. § 41-1461, *et seq.*, against Defendant  
17 Waxie Enterprises in state court. Plaintiff filed a First Amended Complaint on March 2,  
18 2009, adding a claim for violation of the Age Discrimination in Employment Act (ADEA).

19 Defendant removed this action to federal court on May 8, 2009.

20 On May 13, 2009, Defendant filed its “Petition to Compel Arbitration and Motion to  
21 Dismiss, or, in the Alternative, Stay Action Pending Arbitration,” to which Plaintiff filed her  
22 an opposition.

23 This matter was referred to Magistrate Judge Glenda E. Edmonds for all pretrial  
24 proceedings and report and recommendation in accordance with the provisions of 28 U.S.C.  
25 § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2 of the Rules of Practice of the United States  
26 District Court for the District of Arizona.

27 Before the Court for consideration is the Report and Recommendation of Magistrate  
28 Judge Edmonds, filed July 8, 2009, recommending that the Court, after its independent

1 review of the record, grant in part, Defendant's petition to compel arbitration and motion to  
2 dismiss.

3 The Report and Recommendation specifically recommends that the Court grant the  
4 motion to compel arbitration and motion to dismiss, but void as "substantively  
5 unconscionable," the provisions in the arbitration agreement restricting punitive damages,  
6 the award of attorneys' costs and fees, and the choice of venue provision.

7 The Report and Recommendation includes a thorough analysis of the legal authority  
8 and issues raised in the motion to compel arbitration and the remedy consistent with its  
9 findings and severance of the unconscionable provisions in the employment letter  
10 agreement.<sup>1</sup>

11 Plaintiff filed her objections to the Report and Recommendation, arguing summarily,  
12 that the arbitration agreement is substantively unconscionable requiring denial of the request  
13 to sever or rewrite the agreement and denial of the motion to compel arbitration. Plaintiff  
14 argues that her Amended Complaint should move forward in federal court against the  
15 Defendant. In the alternative, Plaintiff moves for reconsideration.

16 In response, Defendant requests that the Court enter an order consistent with the  
17 Report and Recommendation.

18 The Court finds, after careful consideration of the matters presented and an  
19 independent review of the record herein, that the petition to compel arbitration should be  
20 granted in accordance with the findings of the Magistrate Judge set forth in the Report and  
21 Recommendation.

22 Based on the foregoing,

23 **IT IS ORDERED** that Magistrate Judge Edmond's Report and Recommendation  
24 [Doc. #13] is hereby **ACCEPTED** and **ADOPTED** as the findings of fact and conclusions  
25 of law by this Court;

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28 <sup>1</sup>Declaration of Amy Rumbin in Support of Petition to Compel Arbitration, Exhibit  
A.

1           **IT IS FURTHER ORDERED** that Defendant's Petition to Compel Arbitration [Doc.  
2 #6] is **GRANTED**, in part, with the provisions restricting punitive damages, award of  
3 attorney's costs and fees, and the choice of venue hereby voided, in accordance with the  
4 Report and Recommendation;

5           **IT IS FURTHER ORDERED** that this action is dismissed.

6           **IT IS FURTHER ORDERED** that the Clerk of the Court enter judgment  
7 accordingly.

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9           DATED this 31<sup>st</sup> day of March, 2010.

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12           FRANK R. ZAPATA  
13           United States District Judge

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